IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D E R

Ram Bilas v. Addl.Disttl.Court No.3,Jodhpur & Anr.

S.B.CIVIL WRIT PETITION NO.6901/2005
under Articles 226 and 227 of the Constitution of India.

Date of Order : 13th January, 2006

P R E S E N T

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. R.R.Chacha, for the petitioner.
Mr. Suresh Shrimali, for the respondents.

BY THE COURT :

By this petition for writ a challenge is given to the order dated 16.8.2005 passed by learned Additional District Judge No.3, Jodhpur rejecting the application preferred by the petitioner defendant under Order 3 Rule 1 and 2 read with Order 7 Rule 14 and 151 CPC.

By the application referred above the defendant prayed for rejection of the suit preferred by the plaintiff being presented by a person not competent to do so. The suit was presented by one Shri Deepak Parihar son of Shri Jugraj Singh Parihar in the name of Shri Govind Singh son of Shri Jugraj Singh Parihar. A photostat copy of the power of attorney

executed by Shri Govind Singh Parihar in favour of Shri Deepak Parihar was filed before the trial court on 23.8.2004 and the suit was filed on 5.7.2002. In the application under Order 3 Rule 1 and 2 CPC the defendant petitioner averred that Shri Deepak Parihar was not competent to present the suit on 5.7.2002 as on that day he was not having power of attorney to file the suit pertaining to the premises in question.

Learned trial court rejected the application by holding that the error pointed out by the petitioner defendant is mere an irregularity and is curable and on that count the suit cannot be rejected. Being aggrieved by the same, instant writ petition is preferred.

Heard counsel for the parties and perused the order impugned as well as the record available.

The trial court after considering all the facts available on record and by application of settled legal prepositions reached at the conclusion that the error pointed out by the trial court is nothing but an irregularity and is curable. The order impugned does not suffer from any error which may warrant interference of this Court under Article 227 of the Constitution of India. It is well settled that the High Court under Article 226 of the Constitution of India possess supervisory powers which can be

exercised in extraordinary circumstances which can be summarised as under:-

> "1.By Article 227 of the Constitution the power of superintendence is conferred on the High Court with paramount consideration for paying the path of justice and removing any obstacles therein.
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> 2.The power of superintendence conferred by Article 227 is to be exercised sparingly and only in appropriate cases, in order to keep the subordinate courts within the bounds of their authority and not for correcting mere errors. Meaning thereby that the power under Article 227 of the Constitution can be exercised in such cases where the court subordinate:-
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> (i)acted with erroneous assumption or acting beyond jurisdiction,
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> (ii)refused to exercise jurisdiction vested with it,
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> (iii)exercised its powers, authority or discretion capriciously and arbitrarily,
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> (iv)committed a patent error in procedure and there is a perverse finding which is based on no evidence or material or resulting in manifest injustice.
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> 3.The High Court may feel inclined to intervene where the error is such, as if not corrected at that very moment, may become incapable of correction at a later stage.

> 4.The High Court cannot, in exercise of its jurisdiction under Article 227 of the Constitution, convert itself into a court of appeal. Accordingly the power is not available to be exercised to correct mere errors whether on the facts or laws. The mere misconception on a point of law or a wrong decision on facts which can be corrected in appeal are in normal course not required to be adjudicated under Article 227."

In the present case I do not find any jurisdictional error or patent error or exercise of powers by the court below capriciously or arbitrarily. The petitioner failed to make out any case which may warrant interference of this Court under Article 227 of the Constitution of India.

Accordingly the petition for writ fails and, therefore, the same is dismissed.

No order as to costs.

(GOVIND MATHUR),J.

kkm/ps.